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MORTGAGE

14
15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 KIMBERLY HUDSON-BRYANT,
18 individually and on behalf of all others
19 similarly situated,

20 *Plaintiff,*

21 v.

22 OCMBC, INC. D/B/A
23 LOANSTREAM, PREMIER
24 FINANCIAL MARKETING LLC
25 D/B/A RESMO LENDING, AND
26 SEAN ROBERTS

27 *Defendants*
28

Case No. 8:24-cv-67-FWS-JDE

**JOINT MOTION AND
STIPULATION TO
VACATE SCHEDULING ORDER**

1 Pursuant to Local Rule 16-14 and FED. R. CIV. P. 16(b)(4), Plaintiff Kimberly
2 Hudson-Bryant and Defendant OCMBC, Inc. d/b/a LoanStream submit this Joint
3 Motion and Stipulation requesting that the Court vacate the most recent scheduling
4 order entered in this case. (ECF No. 28). Although the Court stated that it was
5 “disinclined to grant additional requests for continuances,” it also stated that it may
6 do so upon making a “strong showing” under Rule 16(b) and applicable precedent.

7 The Parties respectfully request that the Court vacate its scheduling order for
8 the primary reason that an Amended Complaint was recently filed in this matter to
9 assert additional claims against new defendants, Premier Financial Marketing LLC
10 and Sean Roberts. These Defendants were served with the Amended Complaint on
11 September 21, 2024. (ECF No. 39). Accordingly, as new claims have been asserted
12 against the new Defendants, good cause exists to vacate the Court’s current
13 scheduling order and enter a new scheduling order once these defendant’s appear
14 and the nature of their defenses to the action is better ascertained.

15 As this Court noted, Rule 16(b)(4) provides that a schedule may be modified
16 only for “good cause and with the judge’s consent.” In interpreting the “good cause”
17 standard, the District Court looks to the diligence of the parties and evaluates this
18 diligence to determine if the current scheduling order “cannot reasonably be met
19 despite the diligence of the party seeking the extension.” *Johnson v. Mammoth*
20 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

21 Diligence is met here because the Plaintiff diligently filed for an Amended
22 Complaint before the cutoff of September 19, 2024. In *DCD Programs, Ltd. v.*
23 *Leighton*, for example, the Ninth Circuit held that there was good cause when the
24 plaintiff amended its complaint as soon as it had “sufficient evidence of conduct
25 upon which they could base claims of wrongful conduct” and there was no evidence
26 that the Plaintiff harbored a wrongful motive or any cause to uphold the denial of an
27 amendment on the basis of bad faith. 833 F.2d 183, 187 (9th Cir. 1987). So too here,
28 where the Plaintiff filed an amended complaint to assert additional claims against

1 Roberts and Resmo as soon as their alleged participation in the alleged calling
2 conduct at issue was uncovered through third-party subpoena practice.

3 And, unlike in *Johnson*, the parties here seek to vacate the current scheduling
4 order and extend it in light of the timely amendment and before the discovery cutoff,
5 not months after an amendment. *Johnson*, 975 F.2d at 608. The Roberts and Resmo
6 defendants are currently obligated to file their responsive pleading on October 12,
7 2024, which is a Saturday, rendering their deadline October 14, 2024, just one day
8 prior to the cutoff of non-expert discovery. Accordingly, the current scheduling
9 deadlines cannot reasonably be met.

10 The history of this case demonstrates the parties' diligence. Plaintiff's
11 original complaint filed on January 11, 2024 alleged Defendant LoanStream itself
12 conducted the alleged call campaign. LoanStream specifically denied that allegation,
13 and the parties, through counsel, promptly met and conferred. Plaintiff contends she
14 received the allegedly unlawful telephone call from telephone number (213) 521-
15 2618. LoanStream denies any association with that telephone number. Accordingly,
16 Plaintiff engaged in third party discovery to determine what person or entity is
17 associated with that telephone number. Plaintiff had to issue multiple subpoenas to
18 eventually find an entity with responsive documents. Ultimately, Plaintiff obtained
19 documents that Plaintiff contends demonstrate Resmo and Roberts allegedly
20 engaged in an unlawful calling campaign. Plaintiff filed her motion for leave to file
21 a first amended complaint, which this court granted on September 10, 2024. In the
22 first amended complaint, Plaintiff added Resmo and Roberts as new parties to this
23 litigation, and asserted that they conducted the allegedly unlawful call campaign on
24 behalf of LoanStream with the knowledge and approval of LoanStream. LoanStream
25 denies these allegations.

26 Accordingly, Plaintiff believes and therefore avers that the classwide calling
27 records, as well as records into the nature of the alleged relationship between Resmo
28 and Roberts and LoanStream, if any, are currently and most easily within the

possession of Resmo and Roberts. Additionally, given that this is a putative class action, extension of the related expert deadlines is also justified because such experts have not yet reviewed the classwide calling records, which are yet to be produced. Plaintiff believes there exists additional evidence in the form of calling records and records relating to the alleged relationship between LoanStream, Resmo, and Roberts, if any, that will be uncovered through additional discovery and an extension of the corresponding deadlines. *See Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002) (holding that good cause was not met when party pointed to no additional evidence that would have been offered with the granting of more time).

Accordingly, pursuant to L.R. 7-3 and Section VIII of the Court's Civil Standing Order, the Parties jointly stipulate and request that the Court vacate the current scheduling order, set a new scheduling conference to be conducted the new defendants have appeared, and enter the accompanying proposed order attached hereto as **Exhibit 1**.

DATED: October 4, 2024

PARONICH LAW, P.C.

By: /s/ Anthony I. Paronich
ANTHONY I. PARONICH
Attorneys for Plaintiff,
KIMBERLY HUDSON-BRYANT and the
PROPOSED CLASS

DATED: October 4, 2024

SOLOMON WARD SEIDENWURM &
SMITH, LLP

By: /s/ Thomas F. Landers
THOMAS F. LANDERS
Attorneys for Defendant,
OCMBC, INC., dba LOANSTREAM
MORTGAGE

ATTESTATION OF SIGNATURE

Pursuant to Central District Local Rule 5-4.3.4(a)(2)(i), I hereby certify that the content of this document is acceptable to Thomas F. Landers, counsel for Defendant OCMBC, Inc., dba LoanStream Mortgage, and I obtained his authorization to affix his electronic signature to this document.

/s/ Anthony I. Paronich
Anthony I. Paronich

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2024, I electronically filed the foregoing **JOINT MOTION TO VACATE SCHEDULING ORDER** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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/s/ Anthony I. Paronich
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